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Supreme Court, U.S.
FILED
09-37 JUL 3 - 2009
OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED
STATES

PILIPUS SANTOSO, ET AL.,
PETITIONERS,

VS.

U. S. COURT OF APPEALS FOR THE
NINTH CIRCUIT – RESPONDENT.

ON PETITION FOR A WRIT OF
CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONERS

THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petitioners' experiences in Indonesia, on account of their Chinese ethnicity and Christian belief, rise to the level of past persecution, and therefore, they are eligible for the relief in the form of asylum?

2. Whether the Petitioners, members of "disfavored group" in Indonesia, only need to show "a comparative low risk" that they have a well-founded fear of returning to Indonesia to be eligible for asylum?

3. Whether the facts the Petitioners' families are remained in Indonesia should be calculated against their claim for asylum?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record for Petitioner, in compliance with Rule 14(b) and rule 29.6 of the Rules of the Supreme Court of the United States, certifies the following listed person and parties have an interest in the outcome of this case:

1. US Court of Appeals for the Ninth Circuit, Respondent
2. Eric H. Holder, Jr., U.S. Attorney General, Respondent
3. Peter D. Keisler, Attorney for Respondent
4. Paul F. Stone, Attorney for Respondent
5 Ethan B. Kanter, Attorney for Respondent
6. The Board of Immigration Appeals
7. Immigration Judge in Los Angeles, CA
8. Cindy S. Chang, Attorney for Petitioner
9. Pilipus Santoso Petitioner
10. Zussan Miesje Moniaga, Petitioner

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STATEMENT OF JURISDICTION

On April 10, 2009, the US Court of Appeals for the Ninth Circuit denied the Petitioner's petition for panel rehearing. This Court's jurisdiction to grant the review on a writ of certiorari is discretional. The judicial discretion is warranted here because there are legal questions of exceptional importance involved in this case.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

1. Section 241(b)(3) of INA
2. Article 3 of Convention Against Torture

STATEMENT OF THE CASE

This is an immigration case. Petitioners are husband and wife. They are natives and citizens of Indonesia with Chinese ethnicity and Christian belief. Petitioners petition for a writ of certiorari on the decision rendered by the US Court of Appeals for the Ninth Circuit on April 10, 2009.

Petitioners were admitted to the United States in March 1999 and October 1999, respectively, as nonimmigrant visitors with authorization to remain in the United States for a temporary period of time. Petitioners overstayed their visas and were placed in removal proceedings.

As Chinese Christian Indonesians, Petitioners had suffered persecution in Indonesia on account of their ethnicity and religion. They applied for relief from removal to Indonesia in the form of asylum, withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act and under Article 3 of the Convention against Torture.

On May 20, 2004, the Immigration Judge ("IJ") issued a written decision denying petitioners' application for asylum and withholding of removal. Petitioners, through their former counsel, appealed to the Board of Immigration Appeals ("BIA").

On September 8, 2005, BIA affirmed, without opinion, the IJ's decision.

Through the undersigned counsel, Petitioners filed a timely Petition for Review to the US Court of Appeals for the Ninth Circuit Court.

The Ninth Circuit Court denied that petition on November 20, 2008. Petitioners then filed a Petition for Panel Rehearing. Unfortunately that petition was denied on April 10, 2009.

ARGUMENT

A. Petitioners are eligible for the relief in the form of asylum because the experiences they had endured in Indonesia on account of their Chinese ethnicity and Christian religion amount to the level of persecution.

In Singh v. INS, 94 F.3d 1353, 1358 (9th Cir. 1996), the 9th Circuit Court held that: "Persecution may be found by cumulative, specific instance of violence and harassment toward an individual and her family members not only by the government, but also by a group the government declines to control." (Citing Shirazi-Parsa v. INS, 14 F.3d 1424, 1428 (9th Cir. 1994)) The 9th Circuit Court in Singh also found "Discrimination, harassment, and violence by groups the government is unwilling or unable to control can also constitute persecution." Id. at 1539 (citing Arteaga v. INS, 836 F.2d 1227, 1231 (9th Cir. 1988)) Furthermore, the Court in Sangha v. INS, 103 F.3d 1482, 1487 (9th Cir. 1997) found "A single isolated incident may not rise to the level of persecution, [but] the cumulative effect of several incidents may constitute persecution."

In the present case, Petitioners were repeatedly harassed, discriminated, and attacked by the native Indonesians. Petitioners suffered violent attacks targeted at them just because they are Chinese Christians. Cumulatively, the experiences suffered by Petitioners in their home country compel the conclusion that they had suffered past persecution.

B. Petitioners are eligible for the relief in the form of asylum because they are members of "disfavored group" in Indonesia, and they have proved that they have a well-founded fear of future persecution on account of their race and religion.

In Sael v. Ashcroft, the Ninth Circuit Court held that: "Given Indonesia's history of anti-Chinese violence and official discrimination, we hold that Sael's evidence compels the conclusion that Indonesia's ethnic Chinese minority is at least a Disfavored group" The Court further held that: "certain individuals with [Sael's] characteristics-Christian of Chinese ethnicity-could have a well-founded fear of persecution in Indonesia."

There is no dispute regarding Petitioners' ethnicity and religious affiliation. As Chinese Christian Indonesians, Petitioners are members of a "disfavored group".

The past experiences petitioners had suffered with anti-Chinese threats and violence support a "specific inference of personal danger." See Hartooni v. INS, 21 F.3d 336, 341 (9th Cir. 1994); also, in Hoxha, 319 F.3d at 1181, 1184, the Court held that the petitioner demonstrated a "particularized risk" of persecution on account of his Albanian ethnicity with evidence that he was harassed and threatened, attacked on one occasion by a group of anti-Albanian Serbs."

As in Hartooni and Hoxha, Petitioners' past experiences establish a sufficient personal connection to the general persecution directed against ethnic Chinese in Indonesia. Therefore, Petitioners are eligible for the relief in the form of asylum because they have a well-founded fear of returning to Indonesia on account of their Chinese ethnicity and Christian religion.

C. Petitioners' asylum claim should not be undercut just because they have family members remaining in Indonesia.

Some courts have relied on the lack of harm and mistreatment of family members in finding that an applicant's claim is not well founded. In contrast, other courts have held that the lack of harm or mistreatment of other family members is not relevant in cases in which the applicants has been singled out for mistreatment. In *Cordeo-Trejo v. INS*, the court found that to infer that an asylum applicant is unlikely to be persecuted because he and his relatives were not killed during attempts to terrorize them leads to the absurd result of denying asylum to those who actually experienced persecution.

In the present case, Petitioners were lucky to not have been physically harmed during the May 1998 riots or thereafter. However, as discussed supra, the cumulative effective of the incidents happened to the Petitioners in Indonesia on account of their ethnicity and religion, amounting to past persecution. As Petitioners testified during the proceedings, their family members were, and still are, living in fear in Indonesia. The reason why they remained in Indonesia was that they could not obtain visas to leave, and not because they chose to stay in Indonesia. It is an unfortunate fact that not everyone of Petitioner' family members can flee from Indonesia. To conclude that because Petitioners' parents and siblings have

remained in Indonesia without harm undercut their asylum claim was erroneous.

CONCLUSION

Based on the foregoing reasons, Petitioners respectfully request this Petition for a Writ of Certiorari be granted.

Dated: July 3, 2009

Respectfully Submitted,

By: /S/

Cindy S. Chang, Esq.
Attorney for Petitioners

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UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

FILED
APR 10 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PILIPUS SANTOSO; et al., Petitioners,

No. 05-75472

V.

Agency Nos. A075-618-291

A078-111-724

ERIC H. HOLDER, Jr., Attorney General, Respondent.

ORDER

Before: WALLACE, LEAVY, and THOMAS, Circuit Judges.

The full court has been advised of the petition for rehearing en bane and no judge has requested a vote on whether to rehear the matter en bane. *See* Fed. R. App. P. 35.

The petition for rehearing en bane is denied.

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
APR 10 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PILIPUS SANTOSO; et al., No. 05-75472
Petitioners,

V. Agency Nos. A075-618-291

A078-111-724

MICHAEL B. MUKASEY., Attorney General,
Respondent.

MEMORANDUM *

On Petition for Review of an Order of the Board of Immigration Appeals

Submitted November 13,2008**

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

APPENDIX B

Before:

WALLACE, LEAVY, and THOMAS, Circuit Judges.

Pilipus Santoso and his wife, Zussan Miesje Moniaga, natives and citizens of Indonesia, petition for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's ("IJ") decision denying their application for asylum. We have jurisdiction under 8 U.S .C. § 1252. We review for substantial evidence, *Nagoulko* v. *INS,* 333 F.3d 1012, 1015 (9th Cir. 2003), and we deny the petition for review.

Substantial evidence supports the D's finding that petitioners' experiences did not constitute past persecution. *See Hoxha* v. *Ashcroft,* 319 F .3d 1179, 1182 (9th Cir. 2003). In addition, petitioners failed to demonstrate a well-founded fear of future persecution because, although they are members of a disfavored group, they did not demonstrate the requisite individualized risk of persecution. *Cf Sael* v. *Ashcroft,* 386 F.3d 922, 927 (9th Cir. 2004). Substantial evidence further supports the D's well-founded fear finding because petitioners' similarly situated family members continue to live in Indonesia without harm. *See Hakeem* v. *INS,* 273 F.3d 812,816 (9th Cir. 2001).

PETITION FOR REVIEW DENIED.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S. Department of Justice
Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike. Suite 2000 Falls Church. Virginia 22041

Glaser, John S., Esquire
10175 Slater Avenue, Suite 111 Fountain Valley, CA 92708-0000

Office of the District Counsel/LO
606 S. Olive Street, 8th Floor Los Angeles, CA 90014

Name: SANTOSO, PILIPUS A75-618-291
Riders: 78-111-724

Date of this notice: 09/08/2005

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Frank Krider
Chief Clerk

Enclosure
Panel Members: OSUNA, JUAN P.

APPENDIX C

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

==========

File: A 75-618-291 - Los Angeles Date:

In re: SANTOSO, PILIPUS SEP 8 2005

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Glaser, John S., Esquire

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

FOR THE BOARD

IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL
LOS ANGELES, CA 90014

In the matter of Case No.: A75-618-291

SANTOSO, PILIPUS
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IIMMIGRATION JUDGE

This is a summary of the oral decision entered on May 20, 2004.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[x] The respondent were ordered removed from the United States to Indonesia

[ ] Respondent application for voluntary departure was denied and respondent was ordered removed to Or in the alternative to

[ ] Respondent application for voluntary departure was granted until _____ upon posting a bond in the amount of $ _____ with an alternative order of removal to _____

[x] Respondent's application for asylum was ( ) granted (x) denied ( ) withdrawn .

[x] Respondent's application for witholding of removal was ( ) granted (x) denied ( ) withdrawn.

APPENDIX D

[ ] Respondent's application for cancellation of removal under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A (b) (1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section ____ or the INA was ( ) granted ( ) denied ( ) other.

[ ] Respondent's application for Adjustment of status under section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under Section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to Post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration judge's oral decision.

[ ] Proceedings were terminated.

[x] Other: Withholding under Convention Againt Torture- Denied

Date: May 20. 2004
Appeal waived /Reserved (Circled)/
Appeal due by: 6/21/2004

By: Respondent

Charles A .Del Bene
Immigration Judge

IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL
LOS ANGELES, CA 90014

In the matter of Case No.: A78-111-724

MONIAGA, Zussan Miesje Moniaga
Respondent

IN REMOVAL PROCEEDING

ORDER OF THE IIMMIGRATION JUDGE

This is a summary of the oral decision entered on May 20, 2004.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent were ordered removed from the United States to Indonesia

[ ] Respondent application for voluntary departure was denied and respondent was ordered removed to Or in the alternative to

[x] Respondent application for voluntary departure was granted until 7/19/2004 upon posting a bond in the amount of $ 500.00 with an alternative order of removal to Indonesia

[x] Respondent's application for asylum was ( ) granted (x) denied ( ) withdrawn .

[x] Respondent's application for witholding of removal was ( ) granted (x) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A (b) (1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section ____ or the INA was ( ) granted ( ) denied ( ) other.

[ ] Respondent's application for Adjustment of status under section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under Section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to Post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration judge's oral decision.

[ ] Proceedings were terminated.

[x] Other: Withholding under Convention Against Torture- Denied

Date: May 20. 2004

Appeal waived /Reserved (Circled)/

Appeal due by: 6/21/2004

By: Respondent

Charles A .Del Bene
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW UNITED STATES IMMIGRATION COURT
Los Angeles, California

File No.: A 75 618 291 A 78 111 724

May 20, 2004

In the Matter of

PILIPUS SANTOSO and
ZUSSAN MIESJE MONIAGA , Respondents

IN REMOVAL PROCEEDINGS

CHARGES: Section 23'7 (a) (1) (B) of the Immigration And Nationality Act (Act) as amended
-after admission as a non-immigrant under Section 101(a) (15) of the Act - who have remained in the United States for a time longer than permitted.

APPLICATIONS: Section 208(a) of the Act - asylum.
Section 241(b) (3) of the Act - withholding of removal.
Withholding of removal under Article 3 of the Convention Against Torture.
Zussan Miesje Moniaga - Section 240B(b) of the Act - voluntary departure.

ON BEHALF OF RESPONDENTS:
Farnoush Farzad, Esquire

APPENDIX E

ON BEHALF OF DHS:
Kevin Armstrong, Esquire

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

Respondents are husband and wife, natives and citizens of Indonesia. The Immigration and Naturalization Service issued Notices to Appear in each of these cases, in the matter of the male respondent on October 27, 1999 and in the matter of the female respondent December 16th, 2002, alleging that both respondents were natives and citizens Of Indonesia; that the male respondent was admitted to the United States at Los Angeles, California on or about March 29, 1999 as a non-immigrant visitor for pleasure with authorization to remain in the United States for a temporary period not to exceed September 28, 1999; that the female respondent was admitted to the United States at Los Angeles, California on or about July 29, 1999 as a non-immigrant visitor for pleasure with authorization to remain in the United States for a temporary period not to exceed July 28, 2000; that both respondents remained in the United States beyond their authorized period of stay without authorizations from the United States government; that both were charged with removability under the above-noted Section of the Act. .See Exhibit No. 1 in the matter of the male respondent and Exhibit No. 1A in the matter of the female respondent.

The respondents, through counsel, each admitted the factual allegations contained in their respective Notices to Appear. Therefore, the Court finds that removability has been established by clear and convincing evidence as required by law.

The male respondent's case first came before this Court, and a continuance was granted until the Government could place the female respondent in proceedings so she could join her husband on his application for asylum.

The respondents declined to designate a country of removability, and Indonesia was directed. The respondents applied for relief from removal in the form of asylum. Applications for asylum shall also be considered as applications for withholding of removal under Section 241(b)(3) of the Act. The respondents requested also withholding of removal under Article 3 of the Convention Against Torture.

The male respondent was statutorily ineligible for voluntary departure in that he did not acquire one full year of physical presence in the United States between the date that he arrived in the United States and the date that his Notice to Appear as served upon him. The female respondent was eligible for voluntary departure, and she requested as alternate relief the privilege of departing the United States voluntary without expense to the United States Government under Section 240B(b) of the Act.

BURDEN OF PROOF

The respondents shall have the burden of establishing that they are eligible for any requested benefit or privilege under the Act and, with the exceptions of withholding of removal under either Section 241(b)(3) of the Act or withholding of removal under Article 3 of the Convention Against Torture, that it should be granted in the exercise of discretion. If the evidence indicates that one or more of the grounds for mandatory denial of an application for relief may apply, the aliens shall have the burden of proving by a preponderance of the evidence that such grants do not apply.

STATUTORY ELIGIBILITY

Asylum And Withholding Of Removal

To qualify for withholding of removal under Section 241(b) (3) of the Act, the respondents' facts must show a clear probability that their right for freedom would be threatened in a country directed for removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The respondents' facts must establish that it is more likely than not that they would be subject to persecution for one of the grounds specified.

To qualify for asylum pursuant to Section 208 of the Act, the respondents must show that they are refugees within the meaning of Section 101(a) (42) (A) of the Act. The definition of refugee includes the requirement that the respondents demonstrate either that they suffered past persecution or that they have a well-founded fear of future persecution in their country of nationality or last habitual residence on account of one of the same five statutory grounds. The evidence showed that they have a subjective fear of persecution and that the fear has an objective basis. The objective basis of a well-founded fear of future persecution is described in a regulations as a "reasonable possibility of actually suffering such persecution" if the aliens were to return to their home country. The objective component must be supported by credible, direct and specific evidence in the record. The aliens must also be both unable and unwilling to return to or avail themselves to the protection of their home country because of such fear. Finally, an applicant must also establish that they merit a sign in the exercise of discretion. Article 3 Of The Convention Against Torture.

In considering relief under the Convention Against

Torture, the respondents must establish that it is more likely Act; she establishes by clear and convincing evidence that she has the means to depart the United States and intends to do so; that she shall be required to post a voluntary departure bond. In addition, the respondent must be in possession of a travel document that will assure her lawful reentry into her home country.

Discretionary consideration of an application for voluntary departure involves the weighing of factors including the respondent's prior Immigration history, the length of her residence in the United States and the extent of her family business and societal ties in the United States.

The Respondent' s Application For Asylum, Form 1-589

The respondent1s application for asylum, Form 1-589, was marked into the EROP as Exhibit No.2. This application was filed with the Immigration and Nationalization Service on May 27, 1999. This document sets forth that the respondent and his wife were natives and citizens of Indonesia. The application sets forth that the respondents' fear of persecution because of their Chinese ethnicity in Indonesia and that they would be detained, beaten and possibly killed as a result of their ethnicity. The application sets forth that the respondent had been beaten up because of his ethnicity by native Indonesians who aren't controlled by the government. It sets forth that, in fact, the government encourages poor treatment of Chinese. It sets forth that the respondent fears now that the situation is extremely dangerous in Indonesia, and he fears that he will be badly beaten and possibly killed if he returns. The statement also sets forth that the church that he usually attends has been threatened on several occasions because of the targeting of these places of worships by native Indonesians, and it sets forth that he has not been able to freely practice his religion.

This is in response to question no. 3 on the application under part C.

The response to question no. 5 in part C, it sets forth that many Chinese people in Indonesia have been tortured and otherwise harmed based on their Chinese ethnicity. It sets forth that the respondent fears to suffer these consequences of behavior for Chinese people in Indonesia. The response to question no. 6, it sets forth that he would be retained, beaten, tortured and possibly killed, and he would have no power to protect his family safely. In one of these questions, the respondent refers to his declaration attached to his application.

The male respondent attached a three-page statement to his application for asylum. This declaration sets forth that ever since he was a child he suffered discrimination in his home country. It sets forth that as a child he was teased and called "Cinhi", a slang word meaning a degrading of the Chinese ethnicity. It sets forth that when he was a child when he walked to school on occasion the Indonesians would ask him for money, if he didn't have any they would beat him up. The statement does not state when in time this occurred or how often.

The statement sets forth that in May of 1998 in Jakarta, armed forces killed university students during a student demonstration and that this shooting caused a tremendous amount of turmoil. It sets forth that students became very angry and started rioting. The statement continues setting forth conditions of Indonesia during the rioting period in 1998. It sets forth that the respondent was working and had to go home and protect his property and his family while the rioting was occurring. It sets forth that during the rioting the government of Indonesia was afraid to protect the Chinese people.

The statement further sets forth that some fanatic Muslims had threatened some churches and Christian schools and stopped their activities during that period of time. It further sets forth that currently the conditions in Indonesia are getting worse because of the election and 48 parties will fight each other to gain leaders of the country. It must be noted that this statement was made in 1999.

The statements continue stating that during the riots the respondent and his family feared that they might be killed by native Indonesians. It sets forth they all wanted to leave Indonesia, but because he had a tourist visa before the riots started and the families did not have visas that he left the country. It sets forth that his family was desperately trying to leave the country, but they cannot obtain visas as of that time. Finally, the statement concludes stating that the respondent stays in contact with his family and that they told him of the continued persecution of Chinese by the native Indonesians. Again, this being in 1999.

Documents Submitted In The EROP By The Respondent

Respondent submitted numerous forms that were not either indexed or paginated into the record, and these were all admitted into the record collectively as Exhibit No.3. They included his passport, his marriage certificate, his birth certificate and the birth certificate of his parents. It further contained numerous documents concerning the background information on Indonesia. It was represented to the Court that none of these articles named the respondents and the articles did not contradict the United States Department of State Country Reports on Indonesia, but instead only furthered the information in those reports.

Respondent entered into the record at the time of

hearing a series of articles concerning Indonesia as of today. These documents were marked into the record without objection as Exhibit No.4. The Court notes that on one of the first articles, page one of two, entitled "Muslims Christians Fighting Kill 18" on the second page, it sets forth that the Muslims and Christian leaders had entered into a peace deal which was signed in 2002.

Testimony Of The Male Respondent

The male respondent testified that he was 34 years old, born in Indonesia. He testified he was married one time to his present wife, who's in proceedings with him before this Court. He testified that he and *his* wife had one *child* who was born here in the United States and the child is 17 months old.

Respondent testified that his parents live in Indonesia. He testified he has one single brother who lives *in* Indonesia with his parents. He testified he has one sister who is married and has children, and she lives with her husband in Indonesia.

Under direct examination, respondent testified that he was a Christian and that he belonged to the Evangelical church. He testified that both in Indonesia and here in the United States he attends church two times a week. He testified he attends church with his wife here in the United States. He further testified that his whole family are Christians, and they, likewise, attend church two times a week in Indonesia.

The respondent testified that his ethnicity was Chinese and that of his whole family were Chinese in ethnicity. He testified they were all citizens of Indonesia, and they had no other citizenship of any other country.

This respondent testified that he came to the United States on three separate occasions. That he first came in December of 1995 and stayed one month with his wife, and he came here on a honeymoon. He testified that the next coming to the United States with his wife sometime in the winter of 1996 and stayed for 11 months. He testified that he and his wife were collecting Christian articles and gifts for his business in Indonesia. He testified he next came to the United States on March 29, 1999 and that was to seek asylum here in the United States.

He testified that prior to his coming to the United States in March 1999 he had a residence and owned his home in Indonesia. He testified he also had his own business there in that country selling Christian gifts and decorations. He further testified that he made a comfortable living in Indonesia and that his income was above average. He testified he owned his own car and vehicle, his own business and his own home.

Respondent briefly discussed that when he was a child that they would call him Cina and that it was difficult to go to school there as a Chinese person. He testified that he came to the United States in 1999 to apply for asylum because of the conditions in Indonesia, particularly the riots.

The respondent testified that he witnessed the riots and that during the riots he had to take different routes to get to his home to avoid being harmed. He testified that his home and his parents' home that none of the homes of his family were destroyed or harmed. He testified that his business was not harmed. He testified that on occasions if you stopped at a street light people would come up for money and you would have to take off if the light changed quickly. He testified this happened to him on one occasion.

The respondent testified that absolutely nothing happened to him or his family during the riots, but they only witnessed the riots.

He testified that in the year 2000 Christians received threats on their churches and that he read this and heard this in the news. He testified that these threats were to the Evangelical churches. Further, under questioning by the Immigration Judge, the respondent testified that the threats against the churches were not in his home area or anywhere near his city where he was living, but instead in outlying providences.

Respondent testified that he still stays in contact with his family, and they tell him he should stay here in the United States because things are still not going very well in Indonesia.

Under questioning by the Immigration Judge, the respondent testified that the news article that he submitted this date stating that there had been agreements and peace accords between the leaders of the Christians and the Muslim religions, he stated he was aware of that, but he didn't think that that had too much affect on conditions in Indonesia.

The respondent testified that he sold his home and his business in Indonesia before he came here to the United States.

Testimony Of The Female Respondent

The female respondent testified in support of the application for asylum, and she verified the testimony of her husband as being correct. She testified that she was 36 years old, married one time to her present husband and

confirmed that they have one child.

She testified that her parents are alive and they in Indonesia. She testified that she has one brother who is single who lives here in the United States, and she did not know his status here in the United States. She testified that she did know that he was not a lawful permanent resident. She testified that she had one sister who is single and that sister lives in Indonesia with her parents.

This respondent testified that she also was Christian and attended church two times per week both in Indonesia and in the United States. She testified that she was an Evangelical Christian.

This witness testified that when the riots were occurring in Indonesia nothing happened to her family or to herself. She testified they merely witnessed the riots. She testified that her husband owned his own business selling Christian gifts and she gave the name of the business and said the business had a sign above that business which indicated that they sold Christian articles. She testified that during the riots that business was not harmed or burned.

This respondent testified that during the riots they were not able to attend church during that one week period of time and for some short period thereafter. She testified that as soon as things quieted down, they again started attending church twice a week.

This witness testified in support of her application for voluntary departure, and she was qualified for same.

Under cross-examination, this witness testified she came here to the United States to be with her husband. She

testified she did not first come with her husband because she had remained back home to sell Borne of their articles from their household.

She testified that she got her visa at the same time that her husband got his visa.

Proffered Testimony

The respondent was going to call as a witness someone from the respondent's church here in the United States who would verify that he was attending church as a Christian. The Government accepted this offer of proof, and this witness was not called.

The respondent wished to call his cousin who was here in the United States who was granted asylum back in October of 1999. The contention of counsel for the respondent was that because the cousin, who was granted asylum here in the United States by the Immigration Service in 1999, which cousin was not in Indonesia and did not witness the riots at that time in 1998, that his being granted asylum would necessarily result in a grant of asylum in these cases because these witnesses in fact witnessed the rioting.

The Government conceded that the cousin was granted asylum back in 1999 and that the facts as counsel stated them they would accept as being true. As a result, this witness, likewise, was not called, but he would have testified was accepted.

ANALYSIS OF FINDINGS

From the facts submitted in this case, the Court finds that the respondents have failed to meet their burden of

establishing their eligibility for asylum, for withholding of removal under Section 241(b) (3) of the Act or withholding of removal under Article 3 of the Convention Against Torture.

Civil War, Civil Strife

Harm arising from general civil strife does not amount to persecution within the meaning of the Act. Aliens seeing general conditions of riots and upheaval in their country do not qualify for *asylum* on that *basis.* In the Act in Section 208(a) of the Act, Congress cannot intend to prefer eligibility for asylum in all persons who suffer harm from civil disturbances, conditions that necessarily have radical implications.

In the present case, it *is* conceded that the respondents themselves have suffered no past persecution in their home country. They witnessed a riot whereby they themselves were not harmed, but other people of their Chinese ethnicity were harmed. The Court finds that the respondents' claims for asylum cannot be based upon past persecution. It would have to be on a reasonable fear of future persecution.

Family Remaining In Home Country

An applicant's fear of persecution is undercut when his or her family remained in the native country unharmed.

In this case, the court notes that both respondents in this case have family members, their parents and siblings, living in Indonesia since the riots of 1998 and nothing has happened to them. In fact, nothing happened to their families during the riots, and nothing has happened subsequently to this time in history. This fact undercuts the respondent's claims. In fact, both cases, respondents testified that their

parents were Christian and Chinese and that they conduct business and they got to their churched twice a week as they have always done. These facts undercut respondents' claims that they have a reasonable fear of future persecution if they returned to Indonesia.

Persecution by Non-Governmental Entity/Government Unwilling or Unable to Protect

The persecution contemplated under the Act is not limited to the conduct of organized governments, but may, under certain circumstances, be committed by individuals or non-government organizations. In such cases, the respondents must establish that the government is unwilling or unable to protect them.

In the present case, the respondents that because of the March 1998 riots that the government was unable to protect them. The court will note that in any riot or any civil disturbance of that nature in almost every country including the United States, the government will not be able to protect and ensure the safety of all of its citizens.

Further in this case, the respondents having suffered no past persecution had no opportunity to request the government of Indonesia to protect them because they had not been in that situation. The Court finds, likewise, that this also undercuts

their claim of a reasonable fear of future persecution and that they were never in a position to where they had to call upon the government to protect them while they were in Indonesia.

Other Factors

The Court notes that the male respondent had a business selling Christian articles. The testimony and the evidence in this case was that during the riots even though he had a business with a sign stating Christian articles being sold there, nothing happened to his business, and it was not destroyed. This undercuts that during a riotous period where it's alleged that these people were burning and going after Christians that they would have taken that building and business out. They did not. There is plenty of information that at the time of the riots people of Chinese ethnicity were targeted.

However, the Court notes that six years have passed since those riots, and conditions have changed. And while the respondent's cousin might have been granted asylum here in the United States in 1999 before all of the facts developed, in this case further information is available to the Court and the evidence is that the respondents' parents and siblings have remained in Indonesia without harm to either their businesses, their lives or as a result of their religions. This undercuts their claim. Further, the court has an article that the respondents submitted showing that there are attempts to enumerate the differences between the religions there in Indonesia. So, there is some ongoing effort to end a strife between religious rivalries.

As a result of all the above, the Court finds that the respondents have failed to meet their burden of establishing that they would have a reasonable fear of future persecution in Indonesia if they were to return to that country.

Inasmuch as the respondents have failed to satisfy the lower burden of proof required for asylum, the necessary files that they have failed to satisfy the more stringent clear

probability of persecution standard who applied for withholding of removal under Section 241(b) (3) of the Act.

Likewise, respondents have failed to submit any evidence to show that if they were returned to Indonesia the government of Indonesia would take them into custody and torture them or harm them or permit anyone else to do that to them.

ORDERS

IT IS HEREBY ORDERED that the respondents' applications for asylum under Section 208(a) of the Act be denied.

IT IS HEREBY ORDERED that the respondents' applications for withholding of removal under Section 241(b) (3) of the Act be denied.

IT IS HEREBY ORDERED that the respondents' application for withholding of removal under the Convention Against Torture be denied.

IT IS HEREBY ORDERED that the respondent, Zussan Miesje Moniaga, be granted voluntary departure providing she depart the United States in lieu of removal without expense to the United States Government on or before July 19th, 2004 which is the maximum 60 calendar days from the date of this order.

IT IS FURTHER OREDERED that the respondent, Zussan Miesje Moniaga, post a voluntary departure bond in the minimum amount of $500.00 with the government on or before May 28, 2004 which is five business days from the date of this order.

IT IS FURTHER ORDERED that if required by the Government, the respondent, Zussan Miesje Moniaga, shall present to the Government all necessary travel documents for voluntary departure upon demand.

IT IS FURTHER ORDERED that if the respondent, Zussan Miesje Moniaga, fails to comply with any of the above orders, the voluntary departure order shall without further notice or proceedings vacate the next day, and the respondent shall be removed from the United States to Indonesia on the charge contained in her Notice to Appear.

IT IS FURTHER ORDERED that the respondent, Pilipus Santoso, be removed from the United States to his native country of Indonesia based on the charge contained in the Notice to Appear.

Warning to the respondents

To the respondent, Zussan Miesje Moniaga, failure o depart as required means you could be removed and remand to pay civil penalty of $1,000.00 to $5,000.00, and you would become ineligible for voluntary departure, cancellation of removal and any change of adjustment of status for ten years to come.

With respect to the respondent, Zussan Miesje Moniaga, if you fail to depart as required and then fail to comply with the removal order, you could also be fined $500.00 each day of non-compliance.

With respect to respondent, Pilipus Santoso, if you fail to comply with the removal order, you could also be fined $500.00 for each day of non-compliance.

In both cases, if you are removable for being deportable under section 237 of the Act, and you fail to comply with your removal order, you shall face additional fines and/ or could be imprisoned for up to four and in some cases ten years.

CHARLES A. DEL BENE
United States Immigration Judge